

Issue: Qualification/uniform violation/personal grooming; Ruling Date: July 12, 2005;  
Ruling #2005-1059; Agency: Department of Corrections; Outcome: not qualified



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*  
QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections  
No. 2005-1059  
July 12, 2005

The grievant has requested a ruling on whether his April 6, 2005 grievance with the Department of Corrections (DOC or the agency) qualifies for a hearing. The grievant has challenged management's instruction to trim his beard in accordance with a newly adopted dress code policy. The grievant asserts that the facility's dress code policy is (1) vague because "bushy" is a subjective term, (2) discriminatory because women are allowed to have longer hair, and (3) inconsistent with dress/grooming policies at other facilities. For the following reasons, this grievance is not qualified for a hearing.

FACTS

The grievant is employed by the agency as a Warehouse Supervisor. In a February 1, 2005 Memorandum, the Warden initiated a dress code policy, which provides in pertinent part that employees should keep hair, facial hair, and nails "neat, clean and well groomed." The policy explains that "[i]n the Correctional environment, bushy hair beards and overly long fingernails, can for example be a security and/or safety issue." The policy further states that "[i]t is expected that each employee will approach grooming, hair style and length in a conservative manner in consideration of professional appearance, and with security and safety measures in mind."

The grievant states that he was informed that his beard and hair were too bushy and needed to be trimmed. He asserts that he initially trimmed his hair but was informed that it was still too long and that if he did not follow management's instruction to trim his beard and hair in a more acceptable manner, he would be subject to disciplinary action. Accordingly, he trimmed his hair and beard again, apparently, the second time to a length and manner acceptable to the Warden.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.<sup>1</sup> Thus, all claims relating to issues such as the methods, means, and personnel by which work activities are to be carried out, or to the transfer or reassignment of employees within the agency generally do not qualify for hearing, unless the grievant presents evidence raising a sufficient

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<sup>1</sup> Va. Code § 2.2-3004(B).

question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or applied unfairly.<sup>2</sup>

In addition, for a grievance to qualify for hearing, the grievant must show that the conduct grieved involves an "adverse employment action."<sup>3</sup> An adverse employment action is defined as a "tangible employment act constituting a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."<sup>4</sup>

Here, the grievant was required to trim his hair and beard in accordance with a newly promulgated dress code policy. In addition, he was told if he did not adhere to the policy, he could be subject to disciplinary action. Under the facts of this case, these actions alone simply do not rise to the level of "adverse employment actions." The grievant has *not* claimed that he is prevented from shaving because of any sort of skin condition.<sup>5</sup> In addition, being told that failure to follow a policy could lead to disciplinary action is essentially equivalent to receiving a Counseling Memorandum or Notice of Improvement Needed/Substandard Performance Form, actions that this Department has long held do not rise to the level of adverse employment actions.<sup>6</sup> Accordingly, this grievance cannot be qualified for a hearing.<sup>7</sup>

#### APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal the qualification determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court's decision, the

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<sup>2</sup> Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(b) and (c).

<sup>3</sup> Va. Code § 2.2-3004(A).

<sup>4</sup> *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257, 2268 (1998).

<sup>5</sup> *See Bradley v. Domino's Pizza, Inc.* 939 F.2d 610 (8<sup>th</sup> Cir. 1991) for a discussion on how a clean shave policy can have a disparate impact on certain protected population groups such as African-Americans who have a higher incidence of skin disorders including pseudofolliculitis barbae (PFB).

<sup>6</sup> *See* EDR Ruling Nos. 2005-953; 2004-876; and 2004-768.

<sup>7</sup> This Department additionally deems it worthy to note that differing hair length standards for men and women do not violate Title VII of the Civil Rights Act. *See Longo v. Carlisle DeCoppet & Co.*, 537 F.2d 685, 685 (2d Cir. 1976); *Earwood v. Continental Southeastern Lines, Inc.*, 539 F.2d 1349, 1351 (4th Cir. 1976); *Barker v. Taft Broadcasting Co.*, 549 F.2d 400, 401 (6th Cir. 1977); *Knott v. Missouri Pac. R.R. Co.*, 527 F.2d 1249, 1252 (8th Cir. 1975); *Baker v. California Land Title Co.*, 507 F.2d 895, 898 (9th Cir. 1974); *Dodge v. Giant Food, Inc.*, 160 U.S. App. D.C. 9, 488 F.2d 1333, 1336 (D.C. Cir. 1973). Also, as to the grievant's claim that the facility policy is "vague," claims based solely on the contents of policy cannot be qualified for hearing. Va. Code 2.2-3004 (C). Finally, the Department of Human Resource Management has opined that facilities may adopt a policy that differs from those at other facilities as long as facility policies remain within state and agency policy guidelines. *See* EDR Ruling No. 2003-109.

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agency will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the agency of that desire.

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Claudia T. Farr  
Director

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